IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9070 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHOK & J.P. & JAYPRAKASH SON OF MAHADEV MISRA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9070 of 2003

MR MY RADHANPURWALA for Petitioner No. 1

MR RM CHAUHAN Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 24/09/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed against him by the Police Commissioner, Ahmedabad city on

19.4.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

The grounds placed on record and served upon the petitioner reveal that the detaining authority has taken into consideration seven offences registered against the petitioner under sec. 379 of IPC and in-camera statements of two witnesses recorded on 16.4.2003 and verified by the detaining authority on 18.4.2003. The witnesses reveal the incidents of 5.4.2003 and 8.2.2003 which are not reported to the police. From the above material, the order impugned came to be passed by the detaining authority on 19.4.2003.

Ld. advocate Mr. MY Radhanpurwala for the petitioner and ld. AGP Mr. RM Chauhan for the respondents were heard. Ld. AGP placed affidavit of the detaining authority which is also taken into consideration.

Out of various contentions raised on behalf of the petitioner and controverted by ld. AGP, it appears that this matter can be disposed of on the ground as to whether the public order was disturbed or not. So far as the seven offences registered against the petitioner those are the offences under sec. 379 of IPC and it could be hardly said that the public order is disturbed on account of registration of the crime under sec. 379 of IPC. While two statements are concerned, on going through the statements, it clearly appears that on suspicion, the witensses were informing to the police about the illegal activity of the petitioner, the petitioner was beaten, while in other incident, the witness was forced to keep the stolen vehicle and hand over Rs. 15000/- to the petitioner. On refusal, the witness was beaten. Though it is stated in the statement that in the locality the traffic was disturbed, there was an atmosphere of terror and fear. On account of terror created by the petitioner, but taking overall view, this appears to be casual individual incident and not the activity which would affect the public at large or a public tempo. At the most, this can be problems regarding law and order. IN this view of the matter, there is no material to reach to the subjective satisfaction that the activities of the petitioner was prejudicial to public order, the detention order of the petitioner is required to be quashed and set aside on

this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 19.4.2003 by the Police Commissioner, Ahmedabad city, under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

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